



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 8/8/08
DATE FILED: 8/8/08

ANDREW M. CUOMO
Attorney General

LESLIE G. LEACH
Executive Deputy Attorney General
Division of State Counsel

MEMO ENDORSED

JUNE DUFFY
Assistant Attorney General in Charge
Litigation Bureau

August 7, 2008

BY FACSIMILE

Hon. Theodore H. Katz
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY

Re: Roberts v. Arkison - 08 CIV. 5812 (RMB)

Dear Judge Katz:

This Office represents defendant Karen Arkinson, sued as Deputy Commissioner of the New York State Department of Taxation and Finance (the "Department"), in the above referenced matter, in which plaintiff challenges the State's tax collection efforts as a violation of her rights under the United States Constitution. We write to request an extension of defendant's time to respond to the complaint from July 28, 2008 to August 29, 2008. This is defendant's first request for an extension.

This matter was first referred to our Office on June 23, 2008, after the Department had been served with a copy of the complaint, with no index number and no summons. Our search of PACER the next day indicated no such case on the Court's docket. Today we were alerted by your law clerk, Mr. Astile, that defendant's response was due July 28, 2008. Further discussions with the Department indicate that a second complaint, with an index number, together with a summons were served on July 7, 2008 but were erroneously placed in the case file as a duplicate pleading.

Defendant intends to bring a motion to dismiss the complaint for lack of subject matter jurisdiction, as the Tax Injunction Act, 28 U.S.C. section 1341, is a jurisdictional bar to the adjudication of plaintiff's complaint in this Court.

*Deficit time to
answer is extended to August
29, 2008.*

Respectfully,
Rosalie J. Hronsky
Assistant Attorney General

cc: Mr. Eli Mason Roberts (first class mail)

SO ORDERED

120 Broadway, New York, N.Y. 10271-0332 • Phone (212) 416-8610 • Fax (212) 416-8662 • Not for Service of Papers
<http://www.oag.state.ny.us>

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE

TOTAL P.02